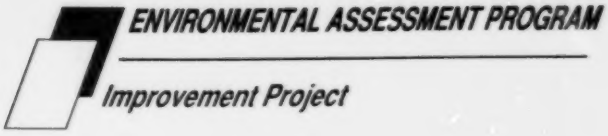

Environment
Ontario
Jim Bradley
Minister

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ENVIRONMENTAL ASSESSMENT PROGRAM IMPROVEMENT PROJECT

PHASE 1

RECOMMENDATIONS FOR IMPROVEMENTS TO THE CURRENT PROGRAM

89-05181/

TABLE OF CONTENTS

		PAGE
1.0	EXECUTIVE SUMMARY	(i)
2.0	INTRODUCTION	1
3.0	BACKGROUND TO THE EA ACT AND THE CH ACT	2
4.	RECOMMENDATIONS TO MAKE CURRENT PROCEDURES MORE SIMPLE AND FLEXIBLE	2
	A) Simplify Requirements for the Issue of Public Notices Under the EA Act	2
	B) Simplify the Process for Approval of Changes to Undertakings	3
	C) Require Early Notice of Submission of an EA	4
	D) Provide for the EA Board to Defer Aspects of a Decision to a Director	5
5.0	RECOMMENDATIONS TO CLARIFY PARTS OF THE EA ACT	6
	A) Make Clear Provision for the Use of Class EA's	6
	B) Introduce a Process for Clarifying Approval Decisions	7
	C) Establish that the EA Board When Conducting Hearings has Powers of Decision Equal to the Minister's	8
	D) Amend Section 34 of the EA Act to Eliminate its Use as a Means of Exemption from the Act	9
6.0	RECOMMENDATION TO INCREASE REGULATORY AUTHORITY UNDER THE EA ACT	10
7.0	CONCLUSION	12
GLOSSARY OF ABBREVIATIONS		

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APPENDICES

APPENDIX A

Flow Diagram of the EA Process

APPENDIX B

Sections of the EA Act and Other Statutes Associated with Recommended Changes

APPENDIX C

List of Class EA's Completed and In Use

APPENDIX D

List of Completed EA Board and Joint Board Hearings

APPENDIX E

Consolidation of Hearings Under the CH Act

APPENDIX F

Section 34 Orders Under the EA Act

1.0 EXECUTIVE SUMMARY

The Environmental Assessment Program Improvement Project (EAPIP), launched in April 1988, is examining ways to improve the Environmental Assessment (EA) Program through comprehensive changes in legislation, regulation, policies, guidelines and administrative practices.

In Phase 1 of the project, EAPIP staff evaluated a list of proposals for improvements originating from earlier comments to the EA Branch and Branch experience in administering the EA Act. Improvements selected for the Phase 1 Report were further reviewed by inter-ministry committees. Those finally chosen are of administrative nature, and for implementation will require the Act to be amended.

The Phase 1 Report recommends nine improvements requiring amendments to the EA Act.

Four would help to make current procedures simpler and more flexible by: allowing public notices to be sent by regular pre-paid mail; allowing the Minister to authorize changes in an undertaking following its approval by the Minister or the EA Board; requiring proponents to give formal public notice of a submission without undue delay; allowing the Minister or the EA Board to delegate specific aspects of a decision to a Director in the Ministry, with provision for appeals from a Director's decision.

Four would help clarify features of the legislation by: making provision for the use of Class EA's; where necessary to clarify a previous decision, allowing the Minister to amend that decision, or allowing the EA Board to rehear a specific matter; establishing that the EA Board, when conducting hearings, has the Minister's powers to make decisions; amending section 34 whereby the section would no longer be a means of exemption from the EA Act.

The final recommendation is for additional regulatory authority to prescribe: the contents of an EA; procedures for public consultation; scoping of matters; and non-acceptance of an EA; and requirements for record keeping, reporting and monitoring of effects.

The Report concludes with six Appendices providing background information.

Draft legislation will be prepared to implement the recommendations after opportunity has been given for interested parties to comment. Responses to the Report and recommendations will be welcome.

The longer term Phase 2 of the Project is examining questions of a more complex nature requiring greater research, public involvement, and analysis and should be seen as the main thrust towards achieving the Project's objective.

2.0 INTRODUCTION

The Environmental Assessment Program Improvement Project (EAPIP), a comprehensive review to improve Ontario's environmental assessment program, was launched in April, 1988, by Environment Minister, Jim Bradley.

The project's objectives are two-fold: to ensure the program operates in as efficient and effective a manner as possible and to examine the understanding and acceptance of environmental assessment.

To achieve these objectives, the project will look at ways of improving the environmental assessment program through changes in legislation, regulations, policies, guidelines and administrative practices.

The project is being conducted in two phases. Phase 1 focuses on non-controversial matters of an administrative nature, concerning current procedures and clarity of legislation. Phase 2 examines questions of a more complex nature requiring greater research, public involvement and analysis.

The proposals for Phase 1 improvements had their origin in earlier comments to the EA Branch experience in administering the EA Act. The results of an initial selection process by EAPIP were reveiwed further by inter-ministry committees.

Phase 1 improvements to the current EA program will require amendments to the EA Act. The Consolidated Hearings Act (CH Act) also has a bearing on some issues as noted in the text.

The Phase 1 report concludes with appendices containing additional background information including Appendix B which provides excerpts from the EA Act and other acts pertaining to the statutes referred to in the main text.

The Environmental Assessment Advisory Committee will hold public meetings and hear concerns expressed on the Phase 1 approach. You are encouraged to participate in the process.

Responses to the report will be welcomed. Please send your written comments by September 22, 1989, to:

The Honourable Jim Bradley
Minister of the Environment
15th Floor
135 St. Clair Avenue West
Toronto, Ontario
M4V 1P5

Attention: Environmental Assessment Program Improvement Project

If you would like further information, please contact Mel Plewes, Project Manager, at (416) 440-3487.

3.0 BACKGROUND TO THE EA ACT AND THE CH ACT

The essential features of the environmental assessment process (EA process) conducted under the EA Act are shown in the flow diagram of Appendix A. The Environmental Assessment Board (EA Board), an independent tribunal established in 1976, may conduct hearings under the *Environmental Assessment (EA), Environmental Protection (EP),* and *Ontario Water Resources (OWR) Acts.* The hearings under the EP Act relate to Part V which regulates waste and under the OWR Act relate to the regulation of water and sewage works.

The EA Act allows the Minister of the Environment to order an EA Board hearing on the acceptance of an environmental assessment document and approval of the undertaking, or on the approval alone. Proponents or members of the public may also request a hearing by the Board on these same matters. The term "undertaking" is used to indicate enterprises, activities or proposals, subject to or potentially subject to the EA Act.

As the EA program began to develop there were fears that the hearing process under the Act would further complicate Ontario's already complex approval procedures. Projects could experience lengthy delays as a result of being subject to hearings under several tribunals before full approval was given. To avoid the time and cost of multiple hearings, the CH Act was passed in 1981 to consolidate hearings which may arise under a number of statutes (see Appendix E).

When an undertaking proceeds under the CH Act, a "joint board" is formed, composed of members from the EA Board and the Ontario Municipal Board. The possible linkage between members of the EA Board and joint boards makes it advisable for the EA and CH Acts to be consistent and this concern is brought to attention in discussing some of the improvements recommended below.

4.0 RECOMMENDATIONS TO MAKE CURRENT PROCEDURES MORE SIMPLE AND FLEXIBLE

A) Simplify Requirements for the Issue of Public Notices Under the EA Act

Background

Each year, up to 30 public notices signed by the Minister are issued under section 37 of the EA Act. The notices usually deal with: submission of an EA document and completion of an EA review (currently a combined notice); acceptance of an EA; approval of an undertaking; and the combined acceptance of an EA and approval of an undertaking.

The EA Act, section 37, requires that notices be sent by registered mail whereas the CH Act, section 22, permits notices to be delivered personally or sent by regular mail.

Registered mail has the advantage of recording that the item has been received. Regular mail, however, is more efficient and less complicated when hundreds of residents potentially affected by a proposed project may need to be reached.

RECOMMENDED CHANGE

Section 37 of the EA Act should allow for delivery of notices by regular pre-paid mail.

B) Simplify the Process for Approval of Changes to Undertakings

Background

Experience with EA approvals has shown that proponents may have need to make changes to an undertaking and consequently to the EA, through the various stages of the process. Changes may even be needed following approval of an undertaking, to accommodate new information or matters of design detail or landowner negotiation.

The current sub-section 7(3) of the EA Act allows changes to be made without restriction as far along the process as notice of completion of review. After that point the Minister may impose terms and conditions.

Once an EA has been accepted or approval to an undertaking has been given, however, section 17 limits further opportunities for change. Any such change can only be made by conducting a full new review where approval has not yet been given, or a full new EA process where approval has been given. There is a possibility for the proponent to obtain an exemption order in either case.

Comment on the Recommendation

The public, particularly those affected, will rightly assume that an undertaking will proceed as planned and approved unless they are advised of the changes, allowed to comment on these changes and given an opportunity to request a hearing on the matter.

RECOMMENDED CHANGE

To give more flexibility in making changes to an EA following the acceptance/approval decisions, either by the Minister or through an EA Board hearing, Section 17 should be amended to allow the Minister to determine whether proposed changes should be authorized with or without terms and conditions, or whether the proponent will need to prepare a new EA. Where a hearing is proceeding, the Minister's authority would be exercised by the Board. Where a hearing has taken place, the Minister should consult with the Board before making his decision. The public should be given an opportunity to comment, before the Minister decides to authorize any proposed change.

The proposed amendment should not discourage the growing practice of incorporating statements in conditions of approval, stipulating procedures for approving the incorporation of changes and defining changes that may be permitted.

C) **Require Early Notice of Submission of an EA**

Background

Section 7 of the EA Act requires the Minister to notify the parties and members of the public involved when an EA has been submitted and received and again when its review has been completed. No time-frame is specified and the practice has been to combine both notices in one transmittal, following completion of the review. Consequently, a delay of between 6 and 24 months, historically the range of the review process, may result before the public is notified of the receipt of an EA. Earlier notification of submission would allow interested parties more time to conduct their own review, and produce a better product. The EA Branch is now encouraging proponents to give the public and others notice of submissions. Some proponents may object to the expense and it would be preferable to make the procedure a statutory requirement.

RECOMMENDED CHANGE

It is proposed that the notice procedure be changed, to give public notice of submission of an EA without undue delay. Section 7 of the Act should be amended to provide that the proponent issue a "Notice of Submission" in a standard format.

D) Provide for the EA Board to Defer Aspects of a Decision to a Director

Background

The *Environmental Statute Law Amendment Act, 1988*, chapter 54, amending the EP Act, the OWR Act and the *Pesticides Act*, received royal assent on June 29, 1988. One major procedural change brought about by the amendments relates to hearings by the EA Board.

In the past, when the EA Board conducted hearings under Part V of the EP Act or under the OWR Act, the hearing panel prepared a draft report which was reviewed by the whole Board and submitted as recommendations to the Director or the Minister, who were not required, however, to follow the recommendations.

Under the amended acts, the hearing panel of the EA Board itself now makes the decision. Appeals from these decisions go to Cabinet, not as previously to the Environmental Appeal Board. The decision will be implemented by the Director. The Director, normally an employee of the Ministry, is appointed by the Minister to undertake responsibilities under one or other act.

At the time the Board makes a decision under either the EP or OWR Act or, where no hearing is required, the Minister makes an approval decision under the EA Act, the final details of how an undertaking will be carried out may still be uncertain. The Board and the Minister require authority to permit the Director appointed to make determinations on any details arising from the decision. The amendment should authorize the Minister and the Board to specify whether an appeal from the Director's determination should be made to the Minister, the Board, the Lieutenant Governor in Council, or the Environmental Appeal Board.

RECOMMENDED CHANGE

Considering the enhanced decision making powers of the Board and the complexity of many decisions, it is proposed to allow specific aspects of a decision, (e.g. approval of plans or specifications) to be delegated, at the discretion of the Minister of the Board, to a Director, and provide for appeals from a Director's decision.

Comment on the Recommendation

The CH Act, sub-section 5(3) provides a Joint Board with the power to defer any matter or part of any matter to be decided by the body that, but for the CH Act, would have power to make the decision on the matter. The recommendation would therefore bring procedures under the EA Board and CH Acts into line.

5.0 RECOMMENDATIONS TO CLARIFY PARTS OF THE EA ACT

A) Make Clear Provision for the Use of Class EA's

Background

Ontario's class environmental assessment (Class EA) procedure is an important contribution to the practice of environmental assessment. It was designed to reduce documentation, time and expense for undertakings, (such as highways, water works, sewage works and so forth) which may occur routinely, are considered limited in scale or have predictable effects on the environment.

The procedure for issuing an approval for a specific Class EA is similar to the way an individual EA review and approval is carried out. Once approval has been granted for the Class EA, a proponent does not have to apply for approvals or exemptions for individual projects within the Class, provided they are planned and implemented according to the Class EA procedure for the project.

The Class EA document describes the procedures that each class project must follow during planning and construction. When carrying out a significant project under a Class EA, the proponent completes an environmental study including public involvement, and incorporates it in an environmental study report (ESR) which summarizes the findings of the various evaluations.

Following their introduction in 1977, Class EA's came gradually into use, particularly as many interim exemptions for provincial and municipal projects were terminated. At present, approvals have been issued for 20 Class EA's which continue to be in use while others are pending (see Appendix C).

Despite the wide use of Class EA's and their acceptance in principle by both proponents and public, they face criticism in two areas. One concerns specific provisions and procedures of their application and will be addressed in Phase 2 of the project.

The other, dealt with in Phase 1, concerns the matter that the EA Act makes no direct reference to the established use of the Class EA's as a procedure for the future planning of certain types of undertakings, although the Act refers to "Class" in sections 40, 41 and 44.

There is a difference of opinion on whether these references validate the current use of the "Class EA", procedures, and thus the possibility of a legal challenge exists.

RECOMMENDED CHANGE

The EA Act should be amended to clarify that:

(1) An EA may relate to a class of undertakings (Class EA).

(2) Approval given to a Class EA may authorize procedures to be followed in planning and carrying out undertakings that are part of the class.

(3) The Minister has the right to exclude approval from particular items of the class.

(4) In approving a Class EA, the Minister may waive some or all of the requirements of the EA Act sub-section 5(3) which defines the content of an EA provided that an authorized procedure is followed.

(5) A class may be defined with respect to any attribute quality or characteristic to include or exclude any specific member.

and also amended to:

(6) Cover matters concerning retroactivity or renewal of Class EA's.

Comments on the Recommendation

Item (3) provides for the use of "bump-up" procedures to elevate a particular project from a Class EA status to an individual EA, should potential impacts on the environment appear more severe than originally supposed.

The purpose of item (4) is to remove grounds for a claim that Class EA's do not meet sub-section 5(3).

B) Introduce a Process for Clarifying Approval Decisions

When the Minister or the EA Board has given approval to an undertaking the decision may require clarification, as for instance to accommodate new information.

Currently, there is no formal procedure in the EA Act to allow decisions to be clarified.

Sub-sections 12(1) and (2) of the CH Act allow joint boards to be re-established to rehear any part of the matter in question considered necessary before making the clarification. The following change to the EA Act would likewise authorize the Minister or the EA Board to clarify decisions.

RECOMMENDED CHANGE

A new provision should be added to the EA Act to allow the Minister to amend previous approval decisions for the purpose of clarifying them.

In the event a hearing has occurred, provision should be made for the EA Board to rehear all or any part of any matter before issuing a decision on matters of clarification.

A clarifying amendment could be initiated at the request of the Board, the Minister, or any party.

Comment on the Recommendation

Precautions should be taken against the possibility that the provision could be used frivolously, through repeated requests for clarification.

C) Establish that the EA Board when Conducting Hearings has Powers of Decision Equal to the Minister's

Background

The Minister's decision-making powers under the EA Act, mainly in sections 13 and 14, are not explicitly transferred to the EA Board at the time of a hearing although common practice assumes that they are, citing section 20 of the EA Act. Arguments have been made before the Board, however, to the contrary and a clarification of the matter would avoid any future misunderstandings.

RECOMMENDED CHANGE

Subsection 12(2) and clause 13(b) of the EA Act should be amended to provide that when the EA Board conducts a hearing, it exercises the Minister's powers to make decisions and impose terms and conditions.

Comment on the Recommendation

The CH Act, subsection 5(2) would give joint boards the same authority.

D) Amend Section 34 of the EA Act to Eliminate its Use as a Means of Exemption from the Act

Background

Circumstances may occur under which waste disposal projects may be subject to both the EA Act and to mandatory hearings under the EP Act Part V. The same risk of repeated hearings may apply to certain water and sewage projects under the OWR Act. All hearings would be before the EA Board.

The current version of section 34 was drafted to avoid this possibility of duplicate hearings through use of either:

> clause (a) which allows the Minister to order that hearings under the EP or OWR Act may proceed and that the EA Act or part of it not apply;
>
> or clause (b) which allows the Minister to order the EA Act applies and that hearings under the other acts not proceed.

Use of clause (a) has raised objections that it provides a means of exemption from the EA Act additional to the formal exemption provisions of section 29 (see Appendix F for examples).

By contrast, clause (b) has proved a useful means to dispense with unneeded hearings, particularly where a waste disposal project was subject to a mandatory hearing under the EP Act Part V in the absence of public demand or technical need. Placing the project under the EA Act makes the hearing a matter for request. No request means that time and expense of a hearing can be avoided (see Appendix F for examples related to both the EP and OWR Acts).

It may be noted that the CH Act does not apply under the circumstances described, since its role is to consolidate hearings under more than one tribunal.

RECOMMENDED CHANGE

Section 34 should be amended to provide that, where an undertaking subject to the EA Act may also be subject to a hearing under Part V of the EP Act or provisions of the OWR Act, the provisions of the EA Act shall apply, and the hearings under the EP or OWR Acts may not proceed unless ordered by the Minister, or provided for as a condition of approval under the EA Act.

The order or approval may prescribe the subject matter of the hearing under the EP or OWR Acts.

The second paragraph is of importance as a means to facilitate hearings under Part V Waste Management of the EP Act, by giving the Board legislative authority to limit the hearing to specified issues.

6.0 RECOMMENDATION TO INCREASE REGULATORY AUTHORITY UNDER THE EA ACT

Background

Experience in administering the EA Act has indicated that there are certain areas, not currently included, where it could prove useful to have regulatory powers. In these areas the Ministry has already planned or issued a number of related guidelines and policies, but these do not have that status with proponents and the public that they would have if given the legal authority of regulation.

Regulations have the force of law combined with the advantage that they can be developed and put into force more quickly than amendments to the statute. Regulations also can generally provide more detailed guidance than is possible in the act itself.

Section 40 prescribes the following matters for which regulations can be made under the current EA Act:

- Defining and designating undertakings and classes of proponents and undertakings;

- Exempting or designating persons, classes of persons, undertakings or classes of undertakings;

- Prescribing additional information for EA's; and

- Prescribing forms.

In relation to the above, Regulation 205/87 describes which proponents are subject to the EA Act and the administrative details applying to them.

The new areas proposed to be covered by regulation generally concern the interpretation and administration of the EA Act.

RECOMMENDED CHANGE

The Ministry is proposing that authority to make regulations be considered for the following areas:

-Prescribing the records that must be kept by proponents and the reporting process;

-Prescribing the particulars required to be submitted as part of an EA in accordance with section 5(3);

-Prescribing procedures for refusal to accept an EA and for the return of an EA for revision;

-Prescribing procedures and requirements for proponents to carry out public consultation in the course of preparing an EA and the method of reporting on the consultation in the EA;

-Prescribing procedures for the scoping of matters to be dealt with in particular EA's, including hearings and related procedures and requiring that the scoping process for an undertaking incorporate an opportunity for public participation;

-Requiring persons responsible to monitor, record and report to the Ministry or to persons specified in the regulation, on observed effects on the environment, and to perform and report to the ministry on research respecting methods of controlling or eliminating adverse effects or reducing the extent of the environment adversely affected; and,

-General provisions respecting the extent, scope and enforceability of regulations, to be consistent with other ministry legislation.

The approval and implementation of all or part of this proposal will give the Ministry authority to make the regulations identified. Consultation with the public, proponents and other ministries and agencies who have concerns for the issues in question will be provided before any specific regulation is proposed. This will allow for a full review of any potential conflicts or concerns of other parties before the proposed regulation is prepared for consideration by the Lieutenant Governor in Council.

The provision for review and comment makes it appropriate to introduce the recommendation under Phase 1 rather than later in Phase 2.

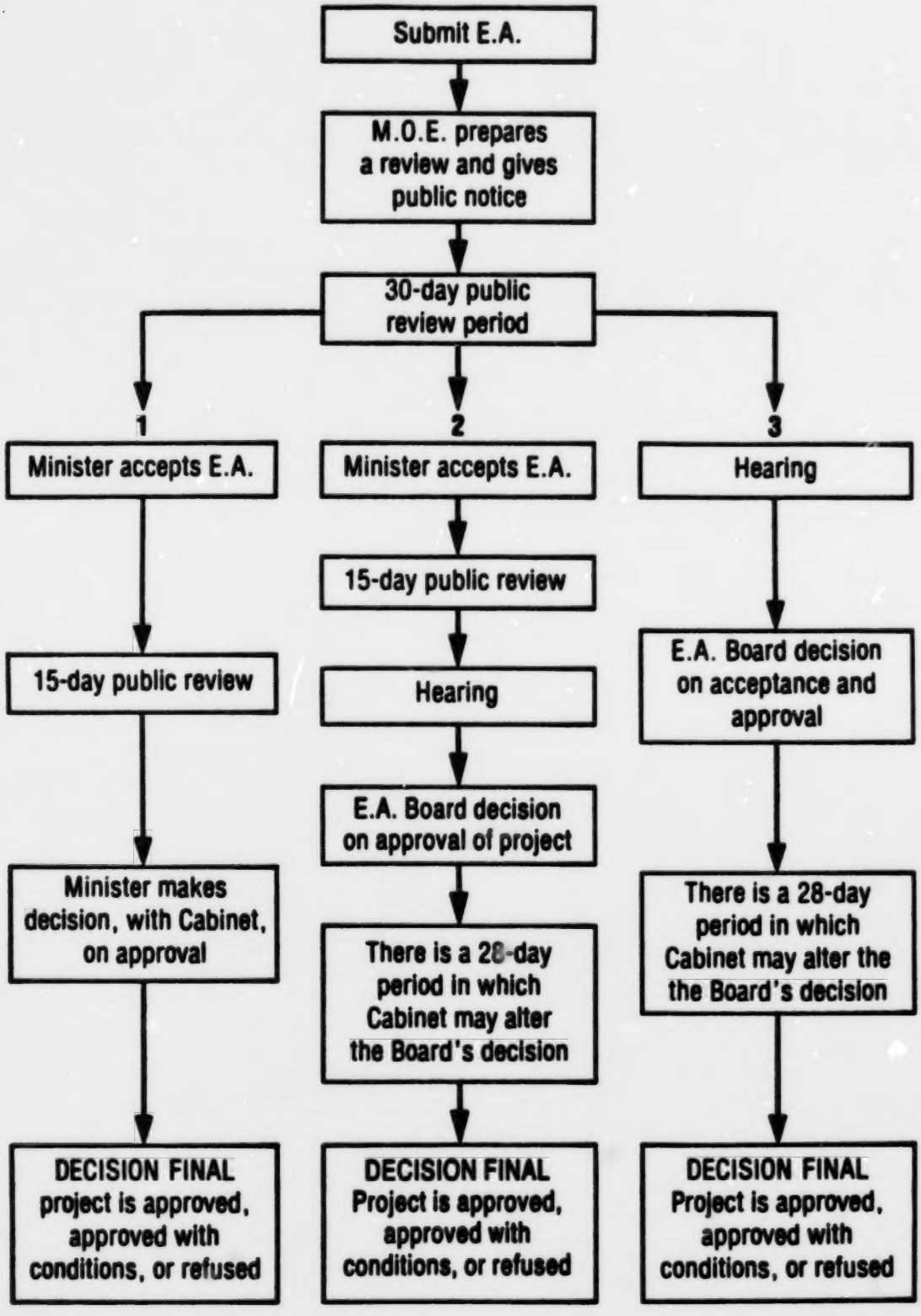
7.0 CONCLUSION

The Phase 1 Stage of EAPIP has been helpful in providing an initial focus for discussion and analysis of the EA program and EA Act. Early in the Phase 1 process, however, it became clear that, if matters under consideration were to be confined, as intended, to non-complex and non-controversial issues, then resulting recommendations could hardly extend beyond limited proposals for administrative changes to the current program and improvements to the clarity of the EA Act, and its consistency with the CH Act.

Within Phase 1, the most favourable opportunities to improve administrative efficiency reside in the recommendation for additional regulatory provisions which will serve to strengthen Ministry policies and guidelines.

It is Phase 2 of EAPIP, however, that must be understood as the vehicle for proposing the changes of significance for improvements to the EA program.

APPENDIX A
BASIC FLOW DIAGRAM OF THE EA PROCESS


Submit E.A.
M.O.E. prepares a review and gives public notice
30-day public review period
1
2
3
Minister accepts E.A.
Minister accepts E.A.
Hearing
15-day public review
15-day public review
Hearing
E.A. Board decision on acceptance and approval
E.A. Board decision on approval of project
Minister makes decision, with Cabinet, on approval
There is a 28-day period in which Cabinet may alter the Board's decision
There is a 28-day period in which Cabinet may alter the the Board's decision
DECISION FINAL project is approved, approved with conditions, or refused
DECISION FINAL Project is approved, approved with conditions, or refused
DECISION FINAL Project is approved, approved with conditions, or refused

NOTE: E.A. refers to Environmental Assessment
M.O.E. refers to Ministry of the Environment

APPENDIX B

SECTIONS OF THE ENVIRONMENTAL ASSESSMENT ACT (EA Act) AND THE CONSOLIDATED HEARINGS ACT (CH Act) ASSOCIATED WITH RECOMMENDED CHANGES

References to Recommended Changes		Reference to the Corresponding Section in the Current EA Act
4.0 A) Simplify Requirements for Public Notice	EA Act	37.—(1) Any notice, order, approval or other document under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the Ministry. (2) A notice, *(a)* given by the Minister pursuant to section 9, section 10 or subsection 14 (3); *(b)* given by the Board pursuant to subsection 12 (3); or *(c)* of the order of the Minister pursuant to section 11, shall be given to the clerk of each municipality in which the undertaking is being or will be carried out. (3) Where notice is given or service is made by registered mail, the giving or service shall be deemed to be made on the seventh day after the day of mailing unless the person to whom notice is given or on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice, order, approval or other document until a later date. (4) Where the Minister or the Board is of the opinion that because the persons who are to be given any notice or document under this Act are so numerous, or for any other reason it is impracticable to give the notice or document to all or any of the persons individually, the Minister or the Board, as the case may be, may instead of doing so, cause the notice or reasonable notice of the contents of the document to be given to the persons by public advertisement or otherwise as the Minister of the Board may direct, and the date on which such notice or reasonable notice of the contents of the document is first published or otherwise given as directed, shall be deemed to be the date on which the notice or document is given.

4.0 A)

Simplify Requirements for Public Notice

CH Act

22.—(1) Any notice, order or other document under this Act or the regulations is sufficiently given or served if delivered personally or sent by prepaid mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the Hearing Registrar.

(2) Where notice is given or service is made by prepaid mail, the giving or service shall be deemed to be made on the seventh day after the day of mailing unless the person to whom notice is given or on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice, order or other document until a later date.

(3) Where a joint board is of the opinion that because the persons who are to be given any notice or document under this Act are so numerous, or for any other reason it is impracticable to give the notice or document to all or any of other persons individually, the joint board may instead of doing so cause the notice or reasonable notice of the contents of the document to be given to the persons by public advertisement or otherwise as the joint board may direct, and the date on which such notice or reasonable notice of the contents of the document is first published or otherwise given as directed, shall be deemed to be the date on which the notice or document is given.

(4) A decision of a joint board shall be deemed to be issued on the day that a copy of the decision is delivered personally or is sent by prepaid mail or is given under subsection (3) to the last of the persons mentioned in subsection 12 (4). 1981, c. 20, s. 22.

4.0 B)

Approval of Changes to Undertakings

EA Act

7.—(3) A proponent may withdraw or amend an environmental assessment at any time prior to the day on which notice is given under subsection (1) and thereafter may withdraw or amend an environmental assessment subject to such terms and conditions as the Minister may by order impose. R.S.O. 1980, c. 140, s. 7.

EA Act

17. Where a proponent of an undertaking proposes to make a change in the undertaking,

(a) before the Minister has given approval to proceed with the undertaking, that does not conform to the environmental assessment of the undertaking as accepted by the Minister; or

(b) after the Minister has given approval to proceed with the undertaking, that does not conform to any term or condition imposed upon the approval to proceed with the undertaking,

this Act applies to the proposal to make the change in the undertaking as though the proposed change were itself an undertaking to which this Act applies. R.S.O. 1980, c. 140, s. 17.

4.0 C)

Require Early Notice of Submission of EA

EA Act

7.—(1) Where an environmental assessment of an undertaking is submitted by a proponent to the Minister, the Minister,

(a) shall cause a review of the assessment to be prepared; and

(b) shall give notice of,

(i) the receipt of the assessment,

(ii) the completion of the preparation of the review,

(iii) the place or places where the assessment and review may be inspected, and

(iv) such other matters as the Minister considers necessary or advisable,

to the proponent, the clerk of each municipality in which the undertaking is being or will be carried out and, in such manner as the Minister considers suitable, to the public and to such other persons as the Minister considers necessary or advisable.

(2) Any person may inspect an environmental assessment of an undertaking and the review thereof in accordance with the terms of the notice referred to in subsection (1) and may, within thirty days of the giving of the notice or within such longer period as may be stated in the notice,

(a) make written submissions to the Minister with respect to the undertaking, the environmental assessment and the review thereof; and

(b) by written notice to the Minister, require a hearing by the Board with respect to the undertaking, the environmental assessment and the review thereof.

(3) A proponent may withdraw or amend an environmental assessment at any time prior to the day on which notice is given under subsection (1) and thereafter may withdraw or amend an environmental assessment subject to such terms and conditions as the Minister may by order impose. R.S.O. 1980, c. 140, s. 7.

4.0 D)

Defer Aspects of Decision to Director

CH Act

5.— (3) A joint board may defer any matter or part of any matter,

(a) to be heard and decided under this Act by the joint board or another joint board at another date; or

(b) to be decided by the tribunal, body, or person that, but for this Act, would have a power, right or duty to deal with the matter or part under any Act set out in the Schedule or prescribed by the regulations.

5.0 A)

Provision for Class EA's

EA Act

40. The Lieutenant Governor in Council may make regulations,

(d) designating any major commercial or business enterprise or activity or class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(e) designating any proposal, plan or program or any class of proposals, plans of programs in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(f) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act, the regulations from the provisions of this Act, the regulations or any section or part of a section thereof and designating any enterprise or activity or class of enterprises or activities or any proposal, plan or program or any class of proposals, plans or programs in respect of any of them by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities as an undertaking or class of undertakings to which this Act applies notwithstanding any exemption under this clause;

EA Act

41. A class of undertakings under this Act or the regulations may be defined with respect to any attribute, quality or characteristic or combination thereof and may be defined to include any number of undertakings under one ownership or more than one ownership and whether or not of the same type or with the same attributes, qualities or characteristics. R.S.O. 1980, C. 140, S. 41.

EA Act

44.—(1) A regulation is not effective with respect to an enterprise or activity that is commenced before the regulation comes into force.

(2) Notwithstanding subsection (1), a regulation is effective with respect to,

(c) any proposal, plan or program in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities proposed or made before the coming into force of the regulation whether the proposal, plan or program is proposed or made before or after the coming into force of this Act.

(3) Notwithstanding subsection (1), a regulation made under class 40 *(f)* is effective whether the enterprise or activity, or class of enterprises or activities, or proposal, plan or program or class of proposals, plans or programs in respect of any of them is commenced, carried on, made or proposed before or after the coming into force of this Act. R.S.O. 1980, c. 140, s. 44.

5.0 B)

Clarifying Approval Decisions

CH Act

12.—(1) A joint board may rehear all or part of any matter before issuing its decision in the proceedings before it.

(2) Upon application, the establishing authority may re-establish a joint board where the establishing authority is of the opinion that part of the decision of the joint board requires clarification, and the re-established joint board may amend its decision in order to clarify the part and may rehear any part of the matter it considers necessary before making the amendment.

5.0 C)

EA Board has Power equal to Minister at Hearings

EA Act

12.—(1) A notice that the Minister proposes to amend an environmental assessment shall state that the proponent or any person who has made a written submission to the Minister pursuant to subsection 7 (2) may, by written notice delivered to the Minister within fifteen days after the giving of the notice of proposal to amend, require a hearing by the Board and the proponent or the person may so require such a hearing.

(2) The Minister, by notice in writing.

(a) may, where he considers it advisable; or

(b) shall, upon receipt of a notice requiring a hearing pursuant to subsection (1) or pursuant to subsection 7 (2), unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay.

require the Board to hold a hearing with respect to,

(c) the acceptance or amendment and acceptance of the environmental assessment;

(d) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and

(e) whether the approval mentioned in class (d) should be given subject to terms and conditions and, if so, the provisions of such terms and conditions.

(3) Upon receipt from the Minister of a notice pursuant to subsection (2), section 13 or clause 23 (1) *(c)*, the Board shall appoint a time for the hearing, shall give reasonable notice thereof to the proponent and to the Minister and in such manner as the Minister may direct, notice to the public, to any person who has made a written submission to the Minister pursuant to subsection 7 (2) and to such other persons as the Minister considers necessary or advisable, and such other notice as the Board considers proper, and shall hold the hearing and decide the matters referred to it in the notice of the Minister.

5.0 C) EA Act 12.— (4) The parties to any proceedings before the Board in respect of the undertaking are,

(a) the proponent;

(b) any person, other than the Minister, who has required the hearing; and

(c) the Board, having regard to the purpose of this Act, may specify. R.S.O. 1980, c. 140, s. 12.

EA Act 13. Where an environmental assessment has been accepted or amended and accepted, and no hearing has been held pursuant to section 12, the proponent or a person who has made a written submission pursuant to subsection (2) may, by written notice delivered to the Minister within fifteen days after the giving of the notice mentioned in section 9 or the notice mentioned in subsection 10 (2), require a hearing by the Board with respect to,

(a) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and

(b) whether the approval mentioned in clause (a) should be given subject to terms and conditions and, if so, the provisions of such terms and conditions, and

the Minister, by notice in writing,

(c) may, where he considers it advisable; or

(d) shall, upon receipt of any such notice requiring a hearing, unless in his absolute discretion he considers that the requirement is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay.

require the Board to hold a hearing. R.S.O. 1980, c. 140, s. 13.

EA Act 14.—(1) Where the Minister has accepted an environmental assessment of an undertaking, the Minister may, with the approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate,

(a) give approval to proceed with the undertaking;

5.0 C) EA Act

14.— (b) give approval to proceed with the undertaking subject to such terms and conditions as the Minister considers necessary to carry out the purpose of this Act and in particular requiring or specifying,

(i) the methods and phasing of the carrying out of the undertaking,

(ii) the works or actions to prevent, mitigate or remedy effects of the undertaking on the environment,

(iii) such research, investigations, studies and monitoring programs related to the undertaking, and reports thereof, as he considers necessary.

(iv) such changes in the undertaking as he considers necessary.

(v) that the proponent enter into one or more agreements related to the undertaking with any person with respect to such matters as the Minister considers necessary,

(vi) that the proponent comply with all or any of the provisions of the environmental assessment as accepted by the Minister that may be incorporated by reference in the approval,

(vii) the period of time during which the undertaking, or any part thereof, shall be commenced or carried out; or

(c) refuse to give approval to proceed with the undertaking.

(2) In determining whether to give approval, give approval subject to terms and conditions or refuse to give approval to proceed with an undertaking in accordance with subsection (1), the Minister shall consider,

(a) the purpose of this Act;

(b) the environmental assessment of the undertakings as accepted by the Minister;

(c) the submissions, if any, made to the Minister with respect to the environmental assessment.

(3) The Minister shall give notice, together with written reasons therefor, of his approval, approval subject to terms and conditions or refusal to give approval to proceed with the undertaking to the proponent, and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 7 (2) and to such other persons as the Minister considers necessary or advisable. R.S.O. 1980, c. 140, s. 13.

5.0 C) CH Act

5.— (2) The joint board may make any decision that might be made by a tribunal that has a power, right or duty to hold a hearing in respect of which the joint board hearing was held or that might be made by any body or person after the holding of the hearing including but not limited to the granting of any authority or directing the granting or issuing of a permit or licence and the imposition of terms and conditions.

5.0 D) EA Act

Amend Section 34

34. Where a proponent is required under this Act not to proceed with an undertaking until an environmental assessment of the undertaking has been accepted by the Minister and a public hearing is required or permitted under the *Environmental Protection Act* [illegible]he *Ontario Water Resources Act* other than by the Environmenta[illegible]ppeal Board or the Ontario Municipal Board with respect to the undertaking, the Minister shall order,

(a) that the public hearing under such other Act may be proceeded with and that this Act or the regulations or any matter or matters provided for in this Act or the regulations that is specified in the order does not apply to the undertaking, or proponent; or

(b) that this Act applies to the undertaking and proponent and the public hearing under such other Act shall be deemed not to be required or permitted. R.S.O. 1980, c. 140, s. 34.

EA Act

29. Where the Minister is of the opinion that it is in the public interest, having regard to the purpose of this Act and weighing the same against the injury, damage or interference that might be caused to any person or property by the application of this Act to any undertaking, the Minister, with the approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate, may by order,

(a) exempt the undertaking or the proponent of the undertaking from the application of this Act or the regulations or any matter or matters provided for in this Act or the regulations subject to such terms and conditions as the Minister may impose,

(b) suspend or revoke an exemption referred to in clause *(a)*;

(c) alter or revoke any term or condition of an exemption referred to in clause *(a)*. R.S.O. 1980, c. 140, s. 29.

6.0 EA Act

Additions to Regulations

40. The Lieutenant Governor in Council may make regulations,

(a) defining any enterprise or activity as a major commercial or business enterprise or activity;

(b) defining enterprises or activities as classes of major commercial or business enterprises or activities;

(c) defining any body other than a municipality as a public body;

(d) designating any major commercial or business enterprise or activity or class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(e) designating any proposal, plan or program or any class of proposals, plans or programs in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(f) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act, the regulations or any section or part of a section thereof and designating any enterprise or activity or class of enterprises or activities or any proposal, plan or program or any class of proposals, plans or programs in respect of any of them by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities as an undertaking or class of undertakings to which this Act applies notwithstanding any exemption under this clause;

(g) prescribing additional information that shall be contained in environmental assessments submitted to the Minister;

(h) prescribing forms for the purposes of this Act and providing for their use. R.S.O. 1980, c. 140, s. 40.

EA Act

5.— (3) An environmental assessment submitted to the Minister pursuant to subsection (1) shall consist of,

(a) **a description of the purpose of the undertaking;**

(b) **a description of and a statement of the rationale for,**

(i) **the undertaking,**

(ii) **the alternative methods of carrying out the undertaking, and**

(iii) **the alternatives to the undertaking;**

(c) **a description of,**

(i) **the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,**

(ii) **the effects that will be caused or that might reasonably be expected to be caused to the environment, and**

(iii) **the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment,**

by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

(d) **an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking. R.S.O. 1980, c. 140, s. 5.**

APPENDIX C

LIST OF CLASS EA's APPROVED AND IN USE TO JUNE 1989

YEAR	SUBMISSION DATE	UNDERTAKING/PROPONENT	APPROVAL DATE
1978	Sept 1	Solid Waste Disposal (MNR)	1984 April 6
1979	Jan 9	Dams and Dykes (MNR)	1982 April 1
	March 26	Fishery Reclamation (MNR)	1987 May 8
	March 28	Access Roads (MNR)	1982 April 1
	April 9	Canoe Routes (MNR)	1982 April 2
1980	Jan 9	Fish Stocking (MNR)	1982 April 1
	Jan 15	Fishways (MNR)	1982 April 1
	April 2	Access Points & Docks (MNR)	1982 April 1
	April 29	Shoreline Stabilization (MNR)	1982 April 1
	April 29	Ponds (MNR)	1982 April 1
	May 2	Dredging and Filling (MNR)	1982 April 1
1982	Feb 8	Municipal Roads (MUN)	1987 April 9
1983	Jan 3	Sewage & Water Systems (MOE)	1983 Sept 23
	Sept 23	Municipal Sewage & Water Systems (MUN)	1987 April 9
	Aug 18	Water Management Structures (CAO)	1985 Dec 12
	Dec 28	Minor Transmission Facilities (OH)	1983 Mar 5
	Dec 29	Provincial Highways Program (MT)	1985 Dec 19
1984	Dec 29	Commuter Facilities (GO)	1987 Feb 5
1985	July 11	Shoreline & Riverbank Improvements (OH)	1987 Dec 16
	July 11	Modifications to Hydro Facilities (OH)	1987 Dec 16

NOTE: CAO (Conservation Authorities of Ontario); GO (GO Transit); MNR (Ministry of Natural Resources; MUN (Municipal); MOE (Ministry of the Environment); MT (Ministry of Transportation); OH (Ontario Hydro)

APPENDIX D

LIST OF EA COMPLETED BOARD AND JOINT BOARD HEARINGS

Proponent	Undertakings	Submission Date	Approval Date	Decision By
MT	HWY 416 - OTTAWA	06/17/85	08/28/87	EA BOARD
MT	HIGHWAY 89	03/12/79	02/01/82	EA BOARD
MT	SMOOTH ROCK FALLS BY-PASS (HWY 634)	02/23/82	11/14/83	EA BOARD
MT	HWY 69 PARRY SOUND REALIGNMENT	09/27/83	06/24/86	EA BOARD
MTRCA	SAM SMITH WATERFRONT PARK	08/03/78	03/31/81	EA BOARD
MUN	METRO TORONTO/FINCH AVE. WEST EXTENSION	10/02/85	05/20/88	EA BOARD
MUN	THUNDER BAY MUNICIPAL AUDITORIUM	05/12/82	03/28/83	EA BOARD
SSMCA	CENTRAL CREEK FLOOD CONTROL PROJECT	11/29/79	05/30/81	EA BOARD
MUN	R.M. HAMILTON/WENTWORTH REDHILL CREEK	01/07/83	11/21/85	JT BOARD
MUN	R.M. HALTON LANDFILL	10/28/85	Decision 02/24/89	JT BOARD
OH	EASTERN ONTARIO TRANSMISSION ROUTE			
	PLAN STAGE	07/05/80	08/06/82	JT BOARD
	ROUTE WEST	09/01/84	05/09/86	JT BOARD
	ROUTE EAST	02/27/85	06/01/86	JT BOARD
OH	SOUTHWESTERN ONTARIO TRANSMISSION ROUTE (WEST)			
	PLAN STAGE	10/29/81	08/10/82	JT BOARD
	ROUTE STAGE	11/01/83		JT BOARD
	COMBINED PLAN & ROUTE STUDY	08/01/85	06/01/87	JT BOARD
PRIV	VICTORIA HOSPITAL ENERGY FROM WASTE	08/10/82	11/15/83	JT BOARD
PRIV	PETRO SUN RESOURCE RECOVERY FACILITY	01/30/87	Appealed	JT BOARD

NOTE: MT (Ministry of Transportation); MUN (Municipal); OH (Ontario Hydry); PRIV (Private); MRTCA (Metro Toronto and Region Conservation Authority) SSMCA (Sault Ste. Marie Conservation Authority)

APPENDIX E

CONSOLIDATION OF HEARINGS UNDER THE ACT

The CH Act may consolidate hearings which arise under the following statutes:

- Environmental Assessment Act
- Environmental Protection Act
- Expropriations Act, sections 6, 7 and 8
- Municipal Act
- Municipality of Metropolitan Toronto Act, subsection 66 (4)
- Niagara Escarpment Planning and Development Act
- Ontario Municipal Board Act
- Ontario Water Resource Act
- Parkway Belt Planning and Development Act
- Planning Act
- Regional Municipality of Ottawa-Carleton Act
- Regional Municipality of York Act, subsections 169(3) and (9)

and, for particular projects, hearings under other statutes may be consolidated by regulation. For example, the Conservation Authorities Act was added to the Schedule of the CH Act, specifically for the Red Hill Creek Expressway hearing.

APPENDIX F

SECTION 34 ORDERS UNDER THE EA ACT

To date, twelve section 34 orders have been issued in connection with the projects below.

The following eight have been brought under the requirements of the EA Act:

- Manitouwadge Township Landfill (approved without a hearing)
- Smooth Rock Falls Landfill (approved without a hearing)
- Williamsburg Township, Sewage Treatment Facility (approved without a hearing)
- Victoria Hospital Energy from Waste Facility (approved following a joint board hearing)
- Sault Ste. Marie Landfill (in process)
- Adelaide Township Landfill (in process)
- North Easthope Township Waste Management Master Plan (in process)
- Toronto Refuse-Fired Steam Plant (in process)

For the above first three projects, it was advantageous to bring them under the EA Act; there were no requests for hearings, and expense and delay were avoided.

The following four projects were brought under the EP Act with the effect of exempting them from the EA Act:

- Chesley Landfill Expansion
- Hanover Township Landfill

Both the above projects narrowly missed the December 1983 deadline after which the grandfather period ended and all municipal projects came under the EA Act; although planning was advanced, administrative delays contributed to the holdup.

- Faraday Township Landfill; an amendment to the Certificate of Approval was required to rectify an administrative oversight.
- Glenridge Landfill, St. Catharines; a proposed site modification was identified as an operational improvement, thus not subject to EA; subsequent events have led to a challenge of this decision and drawn attention to the dangers of using section 34 as an exemption mechanism.

GLOSSARY OF ABBREVIATIONS

CH Act	Consolidated Hearings Act
EA	Environmental Assessment
	Used alone, "EA" may refer to the process of environmental assessment or to the environmental assessment documents, according to context.
	Other obvious uses of the abbreviation are in : Class EA, EA Act, EA Board, EA Branch, EA Program.
EAPIP	Environmental Assessment Program Improvement Project
EA Act	Environmental Assessment Act
OWR Act	Ontario Water Resources Act

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